



STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN RE: NOTICE OF PROPOSED RULEMAKING

RM 04-02

LSA Document #04-144

REPLY COMMENTS OF THE INDIANA OFFICE
OF UTILITY CONSUMER COUNSELOR

December 10, 2004

The Indiana Office of Utility Consumer Counselor (OUCC) offers the following reply comments as a part of the Indiana Utility Regulatory Commission's Rulemaking 04-02 (RM 04-02).

The OUCC appreciates the Commission providing this opportunity to participate in the process of updating customer rights and responsibility rules, many of which have not been modified since the late 1970's.

While the OUCC believes that certain changes should be made to improve the proposed rules (as outlined in the OUCC's initial comments), overall the OUCC feels the proposed rulemaking provides a fair and balanced approach to setting the parameters which govern the relationship between monopoly utilities and their customers.

The OUCC believes the IURC is well positioned to make an informed and

well-reasoned decision with respect to these proposed rules based on the staff research that resulted in the proposal, the many written comments received from interested parties and the comments gathered at two public hearings.

The OUCC is always open to working with any party to find ways to more efficiently and effectively achieve our goal of low-cost, reliable, safe and high quality utility service.

Further, we agree that the current maximum gas deposit rule is a primary concern of most parties and would welcome the opportunity to address this issue in a way that would help affected consumers this heating season. To this end, we stand ready to work with any utility or utility trade association as this rulemaking continues as well as through other, non-regulatory means.

Reply to Specific Indiana Energy Association (IEA) Comments

Small Company Exemption

The OUCC recommends that the IURC reject the suggestion that “small” natural gas utilities – those with fewer than 50,000 customers - be granted complete exemption from any and all of the proposed rule revisions.

While the OUCC understands that certain rule revisions will affect some utilities differently than others, we believe a more measured response rather than complete exemption is appropriate. If the IURC feels such a safety valve is necessary, the OUCC recommends it follow the process used when adopting new Telecommunications customer rights and responsibilities rules; Allow utilities to request temporary or permanent waivers of certain rules and grant such waivers

when justified by the evidence presented at hearing.

Such a process would ensure that all Indiana utility consumers benefit from these rules unless a specific utility can demonstrate that its costs outweigh the benefits of implementing the revised rule.

Cost Recovery

The OUCC believes the IEA comment regarding the proposed rules' "failure" to provide for timely recovery of costs is both misdirected and misplaced.

The proposed rules are designed to update customer rights and responsibilities rules. They do not impact, either positively or negatively, a utility's ability to recover its reasonable and necessary costs of doing business.

While rule changes may have an additional cost, under the "regulatory compact" the appropriate place to recover any such costs is in a rate case where a thorough review may be conducted of all the utilities' fixed, known and measurable costs and expenses. Nothing in RM 04-02 would limit a utility's ability to pursue such relief.

Separating Gas Deposit Limits From Other Rule Changes

The OUCC recognizes and shares the concern that the current natural gas deposit limit is the primary issue for the vast majority of stakeholders participating in this rulemaking.

As outlined in our initial comments, the OUCC believes many of the other issues addressed in the current rulemaking would benefit consumers and should be

pursued expeditiously in this proceeding if not a subsequent rulemaking. However, the OUCC would support the IURC if, after due consideration of all comments received, it elected to limit the current the proposed rulemaking to lowering the maximum natural gas deposit.

"Daisy Chaining" (170 IAC 4-1.2-3(a)(2)(B), etc.)

The OUCC shares utilities' opposition to fraud and concurs that utility consumers are responsible for paying for the service they have requested. The OUCC also believes a consumer with a good credit history should be given the benefit of that hard-earned history. As a result, the OUCC supports the proposed rulemaking's language that requires a customer's creditworthiness to be determined solely on the applying customer's credit history.

If a utility believes another person owing it money may also be residing in a household applying for or receiving service, the utility should pursue collection of that debt as allowed by law.

There was little to no data provided to substantiate the extent or current cost of "daisy chaining." The IURC should require such empirical evidence before consumers are denied essential utility services based on credit histories that are not their own.

Required Meter Reads at Beginning and End of Service

The OUCC supports the proposed rule's current language. If, however, the IURC finds persuasive the IEA and utilities' arguments and evidence that the

proposed requirement is too costly or burdensome, then the OUCC proposes an alternative approach that would require: (1) a utility to notify consumers at the time of request for disconnect or initial service of (a) the utility's intent to estimate final or initial usage and (b) the customer's right to provide an actual meter reading at the time of disconnect or initial service; (2) any discrepancy resulting from an estimated final or initial service meter read and that of a consumer supplied actual read would be the responsibility of the utility, and (3) in any instance where a consumer request for disconnect or initial service necessitates a site visit from utility staff, or if the utility elects to make a site visit, the final or initial service meter reading must be an actual reading.

Third Party Deposit "Security" Arrangements

In response to several comments, the OUCC supports additional, clarifying language in RM 04-02 that would require utilities to enter into contractual arrangements at the request of a third party that wishes to guarantee a consumer's deposit. Such arrangements would help social service organizations and churches to maximize the use of their limited funds while maintaining a utility's access to allowable deposit amounts if the customer was unable or unwilling to pay their bill.

Deposits: Installment Payments (170 IAC 4-1.2-4(a), etc.)

The OUCC strongly opposes PSI Energy's and Marshall County's proposals for treatment of deposits greater than \$150. Both utilities propose customers should be required to pay \$150 up front for service, and any amount over the \$150, be

eligible for payment over three installments. The OUCC is strongly against a utility requiring this large sum up front for establishing service. The OUCC agrees with the proposed rules that deposits greater than \$150 should be payable over three monthly installments, the OUCC goes further to recommend that deposits greater than \$70 but less than \$150 be payable in two monthly installments.

Annual Crediting of Accrued Interest on Deposits (170 IAC 4-1.2-4(i), etc.)

The OUCC disagrees with ITA's and PSI Energy's request to delete language from the proposed rule that would require utilities to annually refund accrued interest on customer deposits. The OUCC feels this rule serves two useful purposes: (1) it puts money back in the pockets of customers who presumably need it the most, and (2) it reminds the customer that their deposit is still being held by the utility.

The utilities' claim that programming costs to implement this change will far outweigh the rule's benefit. There was no data provided to substantiate this claim, however. Absent such evidence, the OUCC supports the IURC's rule as proposed.

Should the IURC decide to remove the annual crediting of interest provision from the proposed rulemaking, the OUCC recommends the IURC add a provision requiring utilities holding deposits to note on the customer's monthly bill the amount of the deposit being held by the utility and that the deposit will be returned upon satisfaction of the conditions set forth in IURC rules.

Reply to Specific Indiana Telecommunications Association (ITA) Comments

170 IAC 7-1.3-3 Creditworthiness of Residential Customer; Deposit; Refund

"Daisy Chaining" (170 IAC 7-1.3-3(a)(2)(B))

The OUCC shares utilities' opposition to fraud and concurs that utility consumers are responsible for paying for the service they have requested. The OUCC also believes a consumer with a good credit history should be given the benefit of that hard-earned history. As a result, the OUCC supports the proposed rulemaking's language that requires a customer's creditworthiness to be determined solely on the applying customer's credit history.

If a utility believes another person owing it money may also be residing in a household applying for or receiving service, the utility should pursue collection of that debt as allowed by law.

There was little to no data provided to substantiate the extent or current cost of "daisy chaining." The IURC should require such empirical evidence before consumers are denied essential utility services based on credit histories that are not their own.

Deceased Spouse Creditworthiness

The OUCC supports the ITA's proposed modification that the spouse of a deceased customer shall be able to utilize the good credit of the deceased spouse when transferring the utility service to the surviving spouse's name. The OUCC welcomes this addition to the rules, but hopes this is already occurring in practice by utilities in their treatment of recently widowed customers.

Four Years is the Appropriate Number of Years for Past Due Payments.

The ITA requests that the IURC raise the number of years a customer must not have failed to pay for any past due telephone service from 4 to 6 years. The OUCC does not support the ITA's submitted change, but understands their self-interest in having the longest time period possible. The OUCC concurs with the IURC's use of 4 years in the proposed rule. The OUCC notes that nothing in this rule prohibits utilities from attempting to recover monies owed to them through other means for as long as the statute of limitations allows.

Residential Service Denial for Partnership or Sole Proprietorship Debt

The ITA proposes that owners of sole proprietorships or members of a partnership whose business has an unpaid final bill will have their application for residential service held until they pay the proprietorship or partnership's bills. Would the LECs advocate not establishing service to a business that has one of many partners with a past due home phone bill? The OUCC sees a distinction between business and residential telephone service and recognizes the benefits of keeping both accounts separate. The LECs have other ways to pursue bad debt from a business, and the business entity is where the LEC should look to in attempt to recover owed money. As such, the OUCC asks the IURC to reject the ITA's proposal.

Payment of Deposit

The ITA requests that the Commission abandon its proposed change to 170 IAC 7-1.3-3(d). The ITA does not want to allow deposits of greater than \$150.00 to

be paid in installments. The OUCC disagrees with the ITA's comments and requests that the Commission keep the language of this section as it is proposed. The OUCC goes further to recommend that deposits greater than \$70 but less than \$150 be payable in two monthly installments.

Annual Crediting of Accrued Interest on Deposits

The OUCC disagrees with ITA's and PSI Energy's request to delete language from the proposed rule that would require utilities to annually refund accrued interest on customer deposits. The OUCC feels this rule serves two useful purposes: (1) it puts money back in the pockets of customers who presumably need it the most, and (2) it reminds the customer that their deposit is still being held by the utility.

The utilities' claim that programming costs to implement this change will far outweigh its benefit. There was no data provided to substantiate this claim, however. Absent such evidence, the OUCC supports the IURC's rule as proposed.

Should the IURC decide to remove the annual crediting of interest provision from the proposed rulemaking, the OUCC recommends the IURC add a provision requiring utilities holding deposits to note on the customer's monthly bill the amount of the deposit held by the utility and that the deposit will be returned upon satisfaction of the conditions set forth in IURC rules.

Charges While an Investigation is Ongoing

The ITA does not support the proposed change that prohibits the utility from assessing any late payment charges while an investigation is pending. The ITA

suggests that the late payment charges should be assessed while an investigation is pending and be adjusted later. The OUCC strongly supports the IURC proposed rule change and strongly disagrees with the ITA's proposed change. The ITA's plan is contrary to the spirit of the rule. The OUCC is concerned with the ITA's proposed shift of the burden from the company to the consumer. The customer will again have to be vigilant to make sure bills are adjusted in the future for past wrongs. This onus the ITA is attempting to place on the utility customer is exactly the type of burden the IURC intended to alleviate in drafting this proposed change. The OUCC requests that the IURC maintain this policy position.

170 IAC 7-1.3-8 Customer Complaints to the Utility

The OUCC supports the IURC's proposed changes to 170 IAC 7-1.3-8(b)(6), and asks the IURC to reject the ITA's request that consumers should not be informed of their right to speak with "supervisory personnel." Anyone who has ever contacted a customer service line knows the frustration that can come from speaking to someone without a thorough understanding of the problem, of speaking to someone without the authority to correct the problem and of not having a problem resolved. Customers should be informed of their right to speak with a higher level employee. This is a simple requirement that, if they are already performing their customer service duties at an optimal level, should not place additional burdens on utilities.

170 IAC 7-1.3-9 Customer Complaints to the Commission

The OUCC supports the IURC's proposed amendment to 170 IAC 7-1.3-9(f). The OUCC believes a 20 day time period is reasonable. The OUCC rejects the ITA's assertion that this number should be 14 days.

170 IAC 7-1.3-10 Customer Payments

Partial Payment

Regarding proposed changes to 170 IAC 7-1.3-10(a)(1), the OUCC supports the IURC's proposed changes and requests that ITA's suggested change to require a minimum payment of at least \$25 or one-third of the deniable charges, whichever is greater, be rejected. ITA's concerns over administrative costs should not trump the admirable, consumer-oriented goal of the rule.

Treatment of Payment for Bundled Products

The OUCC urges the IURC to not revise 170 IAC 7-1.3-10(a)(6), as requested by the ITA. The OUCC believes the current practice described by the ITA of automatic unbundling is not appropriate. The OUCC was not aware of this practice until informed of it by the ITA's comments. If companies continue to operate this way, the OUCC believes further disclosure is needed to alert customer that the unbundling has occurred and higher charges are being applied. This will give customers an opportunity to review their services and cancel them to better meet their budget's needs. Customers subscribe to bundled packages under the assumption of a financial savings. The LEC must make the customer aware that they will no longer be receiving this supposed savings. Under no circumstances

does the OUCC support the ITA's suggestion that they should be able to disconnect subscribers of bundled services when they only pay part of the bundled amount.

The ITA's suggestion is contrary to the spirit of the rules. If a customer pays for part of the bundle that equals the owed deniable charges, they should not be disconnected. Customers should not be asked to give up their rights to basic local phone service just because they subscribe to a bundled package. They should still be able to pay for and maintain local service with or without the bundled package.